

Exhibit S

Page 1 of 1

Curry, Archna

From: Lewis.Kurlantzick

Sent: Tuesday, March 27, 2007 11:33 AM

To: Curry, Archna

Subject: #06-00534, Jeffrey vaughn v. leads, morelli & brown; rulings on parties' motions

Ms. Curry,

The panel's rulings are as follows:

Claimant's motion to dismiss is denied.

Respondents' motion for judgment on the pleadings is denied.

Lewis Kurlantzick

Chairman
for the panel

Please address all future mail to:

Exhibit T

[Page 1]

ARBITRATION PROCEEDINGS

AMERICAN ARBITRATION ASSOCIATION

-----X

In the Matter of the

Arbitration between

JEFFREY S. VAUGHN,

Claimant,

-and-

LEEDS, MORELLI & BROWN, P.C.,

LEEDS, MORELLI & BROWN, LLP,

PRUDENTIAL SECURITIES INC.,

et al.,

Respondents.

-----X

One Liberty Plaza

New York, New York

Monday, April 23, 2007

B E F O R E:

LEWIS KURLANTZICK, Chairman

NATHAN LUBOW, ARBITRATOR

DORIS LINDBERGH, ARBITRATOR

Reported by:

William Byrne

1
2 APPEARANCES:

3 For the Claimant:

4 LIDDLE & ROBINSON, ESQS.

5 800 Third Avenue

6 New York, New York 10022

7 BY: BLAINE H. BORTNICK, ESQ.

8 REBECCA A. SAENGER, ESQ.

9
10 For the Respondent:

11 PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.

12 1285 Avenue of the Americas

13 New York, New York 10018

14 BY: GERARD E. HARPER, ESQ.

15 LIZA M. VELAZQUEZ, ESQ.

16 SAMUEL M. SHELDON, ESQ.

17
18 For the Respondent:

19 Leeds Morelli & Brown

20 RIVKIN RADLER, ESQ.

21 EAB Plaza Uniondale

22 New York 11556

23 BY: SHARI CLAIRE LEWIS, ESQ.

24
25 [Page 2]

1 ALSO PRESENT:

2 KENNETH THYNE, ESQ.

3 JULIA HENICK RIGBY, ESQ.

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25 [Page 3]1
2 PROCEEDINGS3 THE CHAIRMAN: This is the
4 hearing of April 23, 2007 NASD case
5 0600534 Jeffrey S. Vaughn versus
6 Leeds Morelli & Brown et al. We are
7 going to start with the introduction
8 of the arbitration panel. I am the
9 chairman, Lewis Kurlantzick.10 ARBITRATOR LUBOW: Nathan
11 Lubow, the arbitrator.12 ARBITRATOR LINDBERGH: Doris
13 Lindbergh, the arbitrator.14 THE CHAIRMAN: I have no
15 additional disclosures to make at
16 this point.17 ARBITRATOR LINDBERGH: I have
18 no disclosures.19 ARBITRATOR LUBOW: I have no
20 disclosures to make.21 THE CHAIRMAN: We will go
22 around the room and if everybody
23 would indicate your name and your
24 relationship to the parties, please.

25 MR. VAUGHN: Jeffrey Vaughn,

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1 the claimant in this arbitration.

2 MR. BORTNICK: Blaine
3 Bortnick, I am with the law firm of
4 Liddle & Robinson. With me today
5 is my colleague Robin Saenger. I
6 represent the claimant in this
7 action.8 Present in the room today, is
9 Mr. Kenneth Thyne, who is also
10 counsel for Mr. Vaughn. Also Mr.
11 Vaughn's wife is sitting there in
12 the back, she is not a participant.13 MS. LEWIS: My name is Shari
14 Lewis, and I am from the law firm of
15 Rivkin Radler. I represent the
16 respondent Leeds Morelli & Brown in
17 this action.18 MR. HARPER: My name is
19 Gerard Harper. I am from the law
20 firm of from Paul Weiss Rifkind
21 Wharton & Garrison. I represent
22 Prudential Securities, the
23 respondent. And with me are my
24 colleagues Liza Velazquez and Samuel
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[Page 5]

[2] (Pages 2 to 5)

<p>1 Sheldon as well as a representative 2 of my client Julia Rigby who is the 3 assistant general counsel, and I 4 have a paralegal here as well. 5 THE CHAIRMAN: Do you have 6 any objection to Ms. Vaughn being 7 present during the proceeding? 8 MR. HARPER: I don't. 9 THE CHAIRMAN: We need to at 10 this point to obtain conformation 11 from the parties or the 12 representatives of the their 13 acceptance of the panel's 14 composition. 15 MR. BORTNICK: Yes, we accept 16 for the claimant. 17 MS. LEWIS: Yes, we accept. 18 MR. HARPER: Prudential 19 Securities accepts for the 20 respondent. 21 THE CHAIRMAN: We have 22 submitted our properly executed 23 oaths of arbitrators to the NASD 24 dispute resolution staff. This 25 [Page 6]</p>	<p>1 administer or enforce. If any 2 matter comes to the attention of the 3 panel during this panel's 4 participation in this proceeding 5 that this panel has reason to 6 believe may constitute a violation 7 of the association rules or the 8 federal securities laws, the panel 9 may initiate a referral of the 10 matter to the association for 11 disciplinary investigation. 12 If we make any such referral 13 it will only be initiated after this 14 dispute has been either settled or 15 otherwise disposed of or after a 16 final award has been rendered. 17 We have been selected to serve 18 as neutral arbitrators to decide the 19 matter, we are not NASD dispute 20 resolution employees. Pursuant to 21 Canon 1 of the ABA, AAA Code of 22 Ethics we as neutral arbitrators 23 have the duty of conducting this 24 proceeding with fairness and 25 [Page 8]</p>
<p>1 controversy has been submitted to 2 the panel for hearing in accordance 3 with the Code of Arbitration 4 Procedure. 5 The panel is authorized to 6 determine each of the matters set 7 forth in the parties' statements and 8 filed with the NASD dispute 9 resolution unless the law directs 10 otherwise. All the awards rendered 11 pursuant to the code will be final 12 and will not be subject to an 13 appeal. 14 We would appreciate it if no 15 interruptions are made during an 16 individual's testimony. Parties are 17 entitled to make objections, cross 18 examine and redirect witnesses, and 19 the arbitrators may ask questions as 20 they deem appropriate. 21 The submission of the matter 22 to arbitration will not preclude any 23 right of the NASD that it otherwise 24 would be authorized to adopt, 25 [Page 7]</p>	<p>1 integrity. That duty extends to all 2 parties and to this process, 3 therefore, on behalf of the panel I 4 respectfully request that all 5 parties and their counsel or 6 representatives refrain from 7 engaging in any conversations or 8 contact with the panel members 9 except within this room and in the 10 presence of all parties' counsel or 11 representatives. 12 We thank you for your 13 anticipated cooperation in that 14 respect. 15 I need to now administer the 16 oath to those who are or are likely 17 to be witnesses. I don't know who 18 they are. I assume Mr. Vaughn, and 19 I don't know whether that includes 20 Mr. Morelli but if it does please 21 raise your right hand. 22 (The chairman swore in the 23 proposed witnesses: Mr. Vaughn and 24 Mr. Morelli.) 25 [Page 9]</p>

[3] (Pages 6 to 9)

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2 THE CHAIRMAN: The arbitrators
3 have read the pleadings that have
4 been submitted by the parties.
5 These papers along with executed
6 submission agreements will be marked
7 and received into evidence as
8 Arbitrator's Exhibit 1. We intend
9 to take a break midmorning,
10 midafternoon and for lunch.
11 However, if any of the participants
12 have need to take a break at any
13 other time or for any other reason
14 please let us know, and we will be
15 happy to cooperate with you.

16 Each party may make an opening
17 statement. It should be limited to
18 what the parties intend to prove and
19 should not be a presentation of the
20 evidence or of the merits of the
21 case with respect to documentary
22 evidence. That evidence will be
23 marked for identification shown to
24 the opposing parties for review and
25 possible objection to its

[Page 10]

1
2 admissibility.

3 The panel will rule on any
4 objections asserted and determine
5 whether the document will be
6 received in evidence. The parties
7 and attorneys are responsible for
8 providing copies of all proposed
9 exhibits to the other parties and to
10 the panel. Parties are encouraged
11 to avoid repetitive arguments and
12 parties and counsel please direct
13 all objections to the panel and not
14 to each other.

15 We are now ready for the
16 parties' opening statements
17 beginning with the claimant.

18 MR. BORTNICK: Good morning.
19 We are here for what I hope is going
20 to be a very short hearing because
21 we are here to decide just one issue
22 as directed by the federal court. I
23 know that the panel has seen
24 briefing upon briefing upon
25 briefing, and lots of trees have

[Page 11]

1
2 been killed in support of that
3 effort, but it all boils down to one
4 thing what was the intention of the
5 parties to the settlement agreement,
6 when Mr. Vaughn signed a September
7 agreement back in October of 1998
8 where he settled his matter with
9 Prudential Securities. That's all.

10 The agreement contains an
11 arbitration clause, and the
12 arbitration clause says any dispute
13 arising out of the agreement shall
14 be arbitrated pursuant to the rules
15 of the New York Stock Exchange or
16 the NASD. Both forms have the exact
17 same rule. For purposes of the NASD
18 we are talking about the rule that
19 prohibits class actions from being
20 arbitrated and, in fact, furthermore
21 as pointed out in the statement of
22 claim that industry parties such as
23 Prudential are in fact prohibited
24 from enforcing agreements to compel
25 arbitration at the NASD of class

[Page 12]

1
2 action claims. That's why we have,
3 for example, class actions that are
4 dealing with securities, fraud and
5 so forth.

6 Typically, as I'm sure this
7 panel well knows if somebody has a
8 typical customer case they have to
9 arbitrate it, but class actions are
10 heard in court. There are the
11 arbitration agreements when a
12 customer signs up with a company
13 like Prudential or Merrill Lynch or
14 anywhere else.

15 The same thing here. We have
16 an arbitration clause it doesn't
17 include class actions, nevertheless,
18 the federal court has sent to
19 arbitration the question of the
20 meaning of the arbitration clause.

21 Now the court suggested there
22 are three possible interpretations.
23 One of which I think everybody
24 probably agrees in the room, at
25 least from the parties' side it

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[4] (Pages 10 to 13)

1 doesn't apply, which would be that
2 you could have a class arbitration.
3 I'm certain that Mr. Friedman
4 would never allow a class
5 arbitration to go forward with the
6 NASD. The NASD is simply not
7 equipped to handle a class action.
8 So the question is whether Mr.
9 Vaughn intended to waive his rights
10 to bring a class action when he
11 signed the settlement agreement.

12 You will hear Mr. Vaughn
13 testify today, the answer is clearly
14 no. And that will basically be all
15 the evidence you are going to hear.
16 Mr. Vaughn's testimony is going to
17 be short, and I'm interested to see
18 what the defense will be, but we
19 will find out. And that's it.

20 In conclusion of the hearing,
21 which I don't even think should go
22 beyond the morning, I think it will
23 be clear that Mr. Vaughn did not
24 intend to waive class action, his
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1 rights to bring a class action, and
2 as such his class action against
3 Prudential and by extension Leeds
4 Morelli & Brown should go back to
5 court.

6 Leeds Morelli & Brown is here
7 only because even though they are
8 not a party to the agreement the
9 federal court ruled they get the
10 benefit of whatever the arbitration
11 clause is and how it is interpreted
12 as a codefendant with Prudential.

13 They are here even though they
14 are not a party to the settlement
15 agreement, but because they actually
16 are a codefendant in the class
17 action and, therefore, get the
18 benefits, to the extent there are
19 any benefits of an arbitration
20 clause that Prudential Securities
21 gets.

22 Thank you.

23 THE CHAIRMAN: Proceed.

24 MR. HARPER: Thank you, Mr.
25

[Page 15]

1 Chairman. Good morning, and thank
2 you for agreeing to serve.

3 I feel something like deja vu
4 all over again because we have made
5 this argument and heard Mr. Bortnick
6 make this argument over and over
7 again.

8 Let me give you a timeline
9 here, just briefly. Mr. Vaughn
10 entered into a retainer agreement
11 with what was then Leeds Morelli in
12 January of 1998 and he agreed in
13 that retainer agreement to pay a
14 legal fee and Leeds Morelli agreed
15 to attempt to negotiate a
16 settlement.

17 Mr. Vaughn went through a
18 process that we will hear about, and
19 he asked for \$200,000 from
20 Prudential Securities and an
21 extension of his Cobra rights. And
22 he got \$200,000 and an extension of
23 his Cobra rights. And so he got
24 every nickel he asked for in the
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[Page 16]

1 mediation.

2 Almost six years to the day of
3 when he executed that settlement
4 there arrives a class action with
5 Mr. Vaughn's name on the north side
6 of a caption and a bunch of names on
7 the south side of the caption
8 including my client. So we made
9 pursuant to the rules that permit us
10 to make it under the NASD rules,
11 specifically permit us in that
12 circumstance to go into court and
13 compel that he arbitrate pursuant to
14 an arbitration clause that was in
15 the settlement agreement.

16 And in response to that motion
17 to compel my friend, Mr. Bortnick,
18 made exactly the arguments that he
19 is making today. He made exactly
20 the argument that the NASD rules
21 forbid me to do what I did; he made
22 exactly that -- he argued that the
23 rules of the NASD expressly and
24 unambiguously state that a claim
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[5] (Pages 14 to 17)

1 submitted as a class action is not
2 eligible for arbitration.

3 Simply put because they are
4 not eligible for arbitration this
5 court is the appropriate forum. It
6 is beyond doubt that the NASD
7 prohibits the submission of claims
8 and so, therefore, under those rules
9 this court cannot compel an
10 arbitration.

11 That is what Mr. Vaughn argued
12 in front of Judge Coate and Judge
13 Coate responded that the arbitration
14 clause in the agreement contains
15 sweeping language concerning the
16 scope of the questions committed to
17 arbitration, as it commits to
18 arbitration any claim or controversy
19 arising out of or related to the
20 this agreement, meaning the
21 settlement agreement or even the
22 interpretation thereof.

23 And Vaughn claims that the
24 arbitration clause is inconsistent
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1 York State Stock Exchange than I do,
2 that you can't, it doesn't have
3 jurisdiction over parties other than
4 members. And Mr. Vaughn had named
5 Leeds Morelli and a bunch of lawyers
6 from that firm and a bunch of John
7 Does and so forth.

8 So the New York Stock Exchange
9 said we have no jurisdiction over
10 this claim. And so back to court
11 goes Mr. Vaughn and Mr. Bordnick.
12 And once more they make exactly the
13 same arguments that they are making
14 now to this panel, and that they had
15 previously made to Judge Coate.

16 So we went to Judge Coate and
17 said -- they went to the one flora
18 that won't hear claims against
19 nonmembers but the NASD does, so go
20 to the NASD. And in that Judge
21 Coate again sent Mr. Vaughn off to
22 arbitration in December of '05. And
23 then in May of '06, five months
24 later or so, Mr. Vaughn files once
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[Page 20]

1 with the rules of the NASD, but this
2 interpretation contradicts the clear
3 statement that the arbitration
4 clause applies to any claim. Even
5 assuming that Mr. Vaughn was right
6 and the applicable arbitration
7 rulings do apply and indeed forbid
8 class arbitration, that it would be
9 plausible to interpret the
10 arbitration clause required that all
11 the claims be arbitrated and to
12 disallow class action with no
13 further qualifications or caveats.

14 The next thing that happened
15 was that Mr. Vaughn filed a claim
16 identical to the claim he has filed
17 here with the New York State Stock
18 Exchange. And the New York State
19 Stock Exchange has a rule that it
20 will not exercise jurisdiction. It
21 is a plain black and white
22 rule certainly known to my friend
23 Mr. Bortnick who spends more time in
24 these halls than I do and in the New
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1 again an identical piece of paper
2 saying the rules of the NASD forbid
3 class actions, therefore, the
4 promise I made to arbitrate my claim
5 is invalid as to my class action
6 complaint, which is exactly the
7 argument that he had made to Judge
8 Coate the first time and the second
9 time.

10 And so we went into Judge
11 Coate. We said, Judge Coate, he is
12 asking you ladies and gentlemen to
13 be the Second Circuit and to
14 overrule your ruling. And one of
15 the interesting things that Judge
16 Coate said was that she had before
17 her three documents. She had before
18 her the original letter to the NA --
19 rather to the New York State Stock
20 Exchange setting forth the statment
21 of claim and the description
22 following the ruling that she had
23 made.

24 Second she had before her the
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[Page 21]

[6] (Pages 18 to 21)

1 claim, the statement of claim in
2 this case, which again describes in
3 detail or purports to, the issue
4 before this panel and the ruling and
5 intention of Judge Coate.

6 Finally, she had before her a
7 letter that was from Ms. Saenger on
8 behalf of Mr. Vaughn, that says that
9 because we've gotten the lists with
10 your names on them among others, and
11 that the letter says the skills and
12 knowledge options listed in the
13 terms regarding the arbitration
14 selection process do not match the
15 issue before the NASD in this case.

16 Mr. Vaughn's statement of
17 claim presents a very narrow issue
18 of whether he waived his right to a
19 class action by signing the
20 settlement agreement with Prudential
21 Securities. Therefore, we request
22 an arbitration possessing knowledge
23 of the law of arbitration. And to
24 that comment on September when we
25 [Page 22]

1 went into court, and asked Judge
2 Coate what is going on here, she
3 said a couple of interesting things.

4 She said, first, claimant
5 clearly agreed to arbitration of his
6 claims and I ruled that the
7 arbitration agreement was valid and
8 enforceable, and that legally was
9 not in dispute. In other words,
10 under Judge Coate's ruling there is
11 no -- as a matter of law Mr. Vaughn
12 must arbitrate his individual claim.

13 She then said in connection
14 with the order to show cause you
15 have been given a set of documents
16 that include some of the plaintiff's
17 submissions to the stock exchange
18 and to the NASD including a February
19 and October 28th letter to the stock
20 exchange, and a February 2nd letter,
21 a statement of claim to the NASD,
22 and the August 15, 2006 letter to
23 the NASD, the one I just read from
24 involving the arbitration.
25 [Page 23]

1 And I think, said Judge Coate,
2 the presentation of the legal issue
3 in those letters is inaccurate and
4 misleading.

5 So we are just -- where does
6 that leave us? I think what it
7 leaves us with is that -- and I'll
8 make it now in an opening statement
9 rather than later on interrupt the
10 testimony -- I object, if I could do
11 it now, to any testimony from Mr.
12 Vaughn.

13 First, on the grounds there is
14 no parole evidence permissible here
15 because the contract is clear and
16 unambiguous.

17 Second, because the whole
18 thrust of his testimony, as Mr.
19 Bortnick describes it, is that he
20 wants to go back to court to
21 litigate his claim. And that has
22 already been adjudged something he
23 cannot do by Judge Coate.

24 Third, it is an integrated
25 [Page 24]

1 agreement as to which parole
2 evidence as to one portion or
3 another portion is prohibited.

4 Fourth, because the standard
5 or the argument that is being -- the
6 evidence that is being offered for,
7 is that Mr. Vaughn did not give a
8 knowing and voluntary waiver of his,
9 quote, right to a class action.

10 Well, the lawyers in the room
11 are familiar with the concept of
12 knowing and voluntary waiver and
13 what it applies to is substantive
14 rights. If I'm going to waive my
15 right to a privilege against
16 self-incrimination, my waiver of
17 that right must be known and
18 voluntary. But there are scores of
19 cases, and we cite them that say
20 that a waiver of a right to class
21 action is simply a waiver of a
22 procedural means by which a
23 substantive right is adjudicated,
24 and that the class action itself is
25 [Page 25]

[7] (Pages 22 to 25)

1 not a substantive right.

2 And so, therefore, the
3 standard of knowing involuntary
4 waiver has nothing to do with the
5 enforceability of an arbitration
6 agreement.

7 The argument that the claimant
8 is making here is that he doesn't
9 have to arbitrate his claim, and he
10 is seeking a declaratory judgment
11 from you to that effect. He does
12 not even plead what his claim is.
13 In other words, there is no
14 grievance he brings before you other
15 than that he doesn't want to
16 arbitrate, which is exactly what
17 Judge Coate said he must do.

18 And if you read Judge Coate's
19 September 5th transcript of '06, she
20 warns Mr. Bortnick, she warned Mr.
21 Bortnick that if he failed to file a
22 claim that lacked the underlying
23 grievance here, the grievance
24 alleged in the class action, that
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[Page 26]

1 Mr. Vaughn would forever waive and
2 be barred from asserting that claim
3 and --

4 MR. BORTNICK: I'm going to
5 object. That is not flat-out untrue
6 what she said. I have never, I
7 don't think I can remember objecting
8 to an opening statement but that is
9 flat-out untrue, and I know what
10 occurred because she was talking
11 about an ethical issue and she
12 wanted to make sure Mr. Vaughn
13 understood that if he lost in this
14 forum on this issue and he didn't
15 submit an individual claim then it
16 was gone. But it was never about
17 the fact that if he won in this, it
18 was always understood he would have
19 his claim in court and I strongly
20 object to that.

21 MR. HARPER: I've never
22 interrupted an opening statement in
23 my life, and I thought your
24 instruction --
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1 THE CHAIRMAN: Perhaps you
2 were not so offended.

3 MR. HARPER: I don't offend
4 easily, when you have been at this a
5 while.

6 THE CHAIRMAN: Why don't you
7 move on.

8 MR. HARPER: I'm reading from
9 the judge's statement, page 5 now.

10 Now should Mr. Vaughn decide
11 that he doesn't want to submit an
12 individual claim to the arbitration
13 proceeding I expect, and I'm not
14 going to get a ruling on this now
15 but that he can't get a second bite
16 at the apple, and I see plaintiff's
17 counsel nod in agreement, that a
18 forfeiture or waiver rules or res
19 judicata would apply, and that's it.

20 He had an opportunity to
21 arbitrate the claim. Again, we are
22 playing within our hypothetical, he
23 didn't arbitrate it and end of the
24 story. Mr. Bortnick can read into
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1 that whatever he wants. I read it,
2 I think it is pretty clear and so
3 I'll end as I began.

4 This is now the fourth or
5 fifth time I have been in front of
6 decision makers saying that Mr.
7 Vaughn promised to arbitrate, and he
8 is here. And Judge Coate said that
9 that's why he must arbitrate, it is
10 legal and enforceable and he must
11 arbitrate his individual claim.

12 And what Mr. Bortnick and Mr.
13 Vaughn are here to solicit from the
14 panel is a ruling that he need not
15 do so. And with the utmost respect
16 to this panel, the panel has no
17 right to do that.

18 THE CHAIRMAN: Thank you, Mr.
19 Harper.

20 MS. LEWIS: Thank you. I
21 would like to thank you all for your
22 time today. I would like to start
23 first directing your attention to
24 what I hope will be an easily
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[8] (Pages 26 to 29)

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	disposed of matter, and that's the bad faith inclusion of claims against the individual respondent in this proceeding. Separate and apart from the arbitration ruling in the decision by Judge Coate filed on March 20, 2006, which is annexed to our submission as Exhibit G by Judge Coate determined that the individual respondents named in this procedure were dismissed from the case not because of the arbitration clause but because of the lack of jurisdiction. And in response to a cross-motion to extend their time to serve these defendants in that matter, the court indicated that the plaintiff had shown a complete disregard and disinterest in getting them in as parties in this action. So whether or not or whatever this panel concludes as to the arbitrability of this matter, these	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	but those individuals should be given all costs that they incurred in defending what was brought from nothing more than intimidation. That's the first part. And again because there has been no opposition to that application, I presume that that looking at this decision, looking at the submissions by the parties, that can be fairly easily determined. The remainder of the application that applies to this declaratory judgment for permission to go back, which would apply against the law firm or potentially and one of the respondents, I certainly join in the able argument that was put forward by Mr. Harper in terms of what has already been determined by Judge Coate. There is a requirement under the law that if we are going to eviscerate an arbitration provision, it has to be
	[Page 30]		[Page 32]
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	respondents cannot be sent back to federal court. With due deference to this panel there is simply no authority for you to overrule the jurisdictional determination of a federal court that there is no jurisdiction over these individuals. That defense was included in the answer served by the individual respondent. It was fully briefed in the moving papers. It was ignored in the opposition by the claimant and required our reply, when not given multiple opportunities no possible basis has or can be advanced for including these individual defendants and they have been dismissed from the federal action in an application for declaratory judgment saying that they can go back to court against them. And I would submit to you that not only should they be dismissed	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	said with positive assurance that the parties did not intend to the matter to be submitted for arbitration. The only thing that we can say with positive assurance in this case is based upon the facts that there is a settlement clause in the settlement agreement that applies to this dispute that requires any claim or controversy regarding the agreement or its interpretation to be determined by arbitration under the rules of either the NASD or the New York State Stock Exchange. Now, any claim or dispute -- excuse me, any claim or controversy is self-evident as to its meaning on its face. And any effort to introduce testimony contrary to the clear meaning of any claim or controversy must be arbitrated is impermissible under the standard contract interpretation laws and
	[Page 31]		[Page 33]

[9] (Pages 30 to 33)

1
2 against established policy which
3 requires positive assurance that
4 something is not included, but we
5 have even more positive assurance
6 here based upon Judge Coate's
7 decision that said no matter what
8 else, the first decision, her
9 statement on the record later on, no
10 matter what else Mr. Vaughn's
11 individual claims must be
12 arbitrated.

13 She said there were three
14 other possibilities, as Mr. Bortnick
15 said which all agree that one of
16 them is not likely, that the NSAD
17 will take a class arbitration.

18 The other two options that she
19 recognized as plausible did not
20 include Mr. Vaughn going back on his
21 individual claim.

22 And the next thing that we
23 have positive assurance about and we
24 have it because in their submission
25 Mr. Vaughn stated that his

[Page 34]

1 individual claim was identical to
2 and part of the class action claim,
3 that there is nothing that's
4 fictionally out there as a class
5 action that he can go back for, back
6 to court on and still arbitrate as
7 an individual claim because they are
8 one and the same.

9 So clearly what we have, and I
10 think part of the issue here, is
11 that Mr. Vaughn is asking, framing
12 the wrong question, it is not
13 whether, as Mr. Harper suggested
14 there is intentional waiver of the
15 class action but whether or not the
16 parties intended Mr. Vaughn to
17 arbitrate his claims. And that has
18 already been determined, and any
19 parole evidence by Mr. Vaughn or my
20 client Mr. Morelli, would be
21 inappropriate.

22 The phrase is apparent and
23 clear on its face, and to allow any
24 party or their attorney to attack
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[Page 35]

1 the meaning or even address the
2 meaning of a clear phrase in the
3 contract would make all contracts
4 unenforceable. Because everybody
5 could come in and say, oh, I changed
6 my mind and what I really intended
7 was this or that. It is just here
8 the language is so clear based upon
9 the agreement, which I suggest is
10 the piece of evidence in this case.
11 It would be inappropriate. That's
12 all I have to say right now.

13 THE CHAIRMAN: Thank you, Ms.
14 Lewis.

15 We are ready for the
16 presentation of evidence starting
17 with the claimant.

18 MR. BORTNICK: Thank you, I
19 call Mr. Vaughn.

20 MR. HARPER: I take it for
21 the record, Mr. Chair, that you have
22 overruled my objection.

23 THE CHAIRMAN: No, I want to
24 to hear what he has to say before
25

[Page 36]

1 and I also want to hear from the
2 other side. It is not no one has
3 responded to your argument.

4 MR. HARPER: Fine, I beg your
5 pardon.

6 MR. BORTNICK: At this time I
7 think it it is probably easier if I
8 just introduce the first three
9 exhibits before we get going with
10 Mr. Vaughn.

11 THE CHAIRMAN: Fine.

12 MR. BORTNICK: Exhibit Number
13 1 is going to be the opinion and
14 order of Judge Coate dated August
15 12, 2005.

16 Exhibit Number 2 is going to
17 be the transcript of the hearing in
18 front of Judge Coate dated September
19 5, 2006.

20 And Exhibit 3 is going to be
21 the settlement agreement between Mr.
22 Vaughn and Prudential dated October
23 1998.

24 MR. HARPER: We have one
25

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[10] (Pages 34 to 37)

1 signed by both parties.
 2 MR. BORTNICK: That's fine,
 3 we would be happy to do that.
 4 MR. HARPER: Why don't we use
 5 that one.
 6 MR. BORTNICK: Okay.
 7 JEFFREY S. VAUGHN,
 8 having been first duly sworn by a the
 9 Chairman was examined and testified as
 10 follows:
 11 (Exhibit Number 1, opinion and
 12 order of Judge Coate dated August
 13 12, 2005 marked for identification,
 14 as of this date.)
 15 (Exhibit Number 2, transcript
 16 of the hearing in front of Judge
 17 Coate dated September 5, 2006 marked
 18 for identification, as of this
 19 date.)
 20 (Exhibit Number 3, settlement
 21 agreement between Mr. Vaughn and
 22 Prudential Securities, dated October
 23 1998 marked for identification, as
 24 of this date.)
 25

[Page 38]

1 J. Vaughn
 2 EXAMINATION BY
 3 MR. BORTNICK:
 4 Q. Mr. Vaughn, on Exhibit Number
 5 2, the transcript, I would like you to
 6 turn to page 14.
 7 A. Yes.
 8 Q. Line 19 of the transcript that
 9 begins with "I did not," can you read that
 10 through the next two sentences?
 11 A. I did not rule --
 12 MR. HARPER: I object. You
 13 can read this as well as the witness
 14 is the witness reading what Judge
 15 Coate said to the panel.
 16 THE CHAIRMAN: Proceed.
 17 MR. BORTNICK: We just heard
 18 here two attorneys telling this
 19 panel what the judge said. I
 20 thought it would be a much better
 21 idea, it is a much better idea, it
 22 is very short let's put it in front
 23 of the panel and read it out loud,
 24 so everybody can hear it what the
 25 judge said why we are here.

[Page 39]

1 J. Vaughn
 2 THE CHAIRMAN: I will permit
 3 it, overruled.
 4 Q. Start with "I did not."
 5 A. "I did not rule that
 6 everything had to be subject to
 7 arbitration. I contemplated, therefore,
 8 that the arbitrator in deciding the
 9 parties intentions might decide that their
 10 agreement to arbitrate does not foreclose
 11 the plaintiffs from coming to court and
 12 litigating a class action."
 13 Q. If you turn over to page 15 --
 14 A. Yes.
 15 Q. -- and just read the next
 16 sentence beginning at line 3 with "but"
 17 just the one sentence.
 18 A. "But I think it would be wrong
 19 for the defendants to characterize it the
 20 way you are today, to suggest that the
 21 arbitrators' hands are bound in some way
 22 such that they couldn't rule in
 23 interpreting the party's intent that the
 24 plaintiff has the right to come to court
 25 and proceed on a class action."

[Page 40]

1 J. Vaughn
 2 Q. Thank you. Mr. Vaughn, now,
 3 you had actually filed a class action in
 4 court?
 5 A. Yes.
 6 Q. If you turn to Arbitrator's
 7 Exhibit 1, is this the amended complaint
 8 that you filed in front of Judge Coate?
 9 A. Yes.
 10 Q. And the date of this amended
 11 complaint is what?
 12 Is there an affidavit of
 13 service attached to it?
 14 A. Yes.
 15 Q. When was it served?
 16 MS. LEWIS: Objection. There
 17 has been a legal determination as to
 18 the service on various parties. In
 19 fact the legal determination that
 20 five of the parties were not served.
 21 I do not believe that this witness
 22 has any personal knowledge of
 23 service of any legal document.
 24 MR. BORTNICK: The only
 25 purpose here is to just, so that it

[Page 41]

[11] (Pages 38 to 41)

1 J. Vaughn
2 is all clear that at the time Judge
3 Coate made these statements on the
4 record, she had in front of her the
5 complaint that Mr. Vaughn had filed
6 a class action complaint and then
7 she thereafter made the statement
8 many times. That's all.

9 THE CHAIRMAN: We will note
10 that.

11 Q. Mr. Vaughn, I'm not sure you
12 stated your full name for the record,
13 would you please state your full name.

14 A. Jeffrey Sherwood Vaughn.

15 Q. Just very briefly, what's your
16 educational background?

17 A. Finance at Pace in 1985.

18 Q. You received what degree?

19 A. BA in finance.

20 Q. And there came a time where
21 you became employed by Prudential
22 Securities?

23 A. That's correct.

24 Q. When was that?

25 A. In February of '85.

[Page 42]

1 J. Vaughn
2 that were done on the floor of the
3 exchange. Breaks meaning discrepancies
4 between transactions that went on the
5 prior day. Or like I said up to some
6 point, up until the settlement I was the,
7 one of the key people in making sure the
8 company had no exposure.

9 Q. This was a back office
10 function?

11 A. Yes, this was a back office
12 function.

13 Q. And how long did you remain in
14 this job?

15 A. For maybe four years I would
16 say.

17 Q. And then what was your next
18 job?

19 A. The next job was trade support
20 specialist, which I actually worked on the
21 block trading desk working with the
22 traders and the back office in P&S, and
23 pretty much a liaison between the traders
24 and the floor of the exchange and our
25 Prudential block office.

[Page 44]

1 J. Vaughn
2 Q. And what was the firm known as
3 at the time?

4 A. Pru Bache, I believe.

5 Q. Prudential Bache?

6 A. Yes.

7 Q. Were you licensed in the
8 securities industry at any time such as a
9 Series 7 or any other security license?

10 A. No.

11 Q. Have you ever received a
12 security license?

13 A. No.

14 Q. What was your first job with
15 Prudential Securities?

16 A. Operations clerk.

17 Q. And what did those job
18 responsibilities entail?

19 A. Pretty much to take care of
20 all back office issues that were
21 pertaining to trades that were done the
22 prior day or any day before the settlement
23 of trades.

24 Q. Can you give me an example?

25 A. Pretty much whatever breaks

[Page 43]

1 J. Vaughn
2 Q. The block trading desk is a
3 large number of shares being traded at one
4 time?

5 A. Yes.

6 Q. For example, 20,000 shares of
7 IBM that would be a block trade?

8 A. Yes.

9 Q. A big one?

10 A. No, a small one.

11 Q. And this again was a back
12 office function?

13 A. Yes, it was.

14 Q. And how long did you remain
15 employed with Prudential?

16 A. For a total of about 13 years.

17 Q. When did you leave?

18 A. In '98 I want to I believe it
19 was November of '98.

20 Q. Was it before or after you
21 signed Exhibit 3 the settlement agreement?

22 A. After.

23 Q. And you stayed with Prudential
24 through all of its name changes?

25 A. Yes, I did.

[Page 45]

[12] (Pages 42 to 45)

1 J. Vaughn
2 Q. But it was always as a broker
3 dealer?
4 A. Yes.
5 Q. The respondent party here
6 today?
7 A. Meaning.
8 Q. Prudential Financial?
9 A. Now it is Prudential
10 Financial, when I left it was Prudential
11 Securities.
12 Q. Now, did there come a time
13 where you retained the law firm of Leeds
14 Morelli & Brown to represent you?
15 A. Yes, I did.
16 Q. You heard the opening
17 statement from Mr. Harper which said it
18 was January of 1998; does that sound about
19 right?
20 A. That's when I signed the
21 retainer, that's correct.
22 Q. When did you first start
23 talking with Leeds Morelli & Brown?
24 A. Probably back in November the
25 prior year.

[Page 46]

1 J. Vaughn
2 Q. And just very briefly what was
3 the subject matter that you asked Leeds
4 Morelli & Brown Leeds to represent you in?
5 A. Briefly it was a hostile work
6 environment, a discrimination issue.
7 Q. Were you the only person
8 represented by Leeds Morelli & Brown who
9 were employees of Prudential with respect
10 to this matter?
11 A. No.
12 Q. How many were there?
13 A. Initially it probably started
14 out to be about maybe 50 people and as it
15 went on it ended up to be about 400 or a
16 little more maybe.
17 Q. Over the same issue?
18 A. Yes.
19 Q. Was it your intention at that
20 time to file a lawsuit?
21 A. Yes.
22 Q. Where were you intending to
23 file a lawsuit at that time?
24 MS. LEWIS: At what point in
25 time?

[Page 47]

1 J. Vaughn
2 THE CHAIRMAN: When he
3 retained Leeds Morelli & Brown to
4 prosecute the discrimination case.
5 A. Meaning where?
6 Q. In court.
7 A. In court.
8 Q. Had you had exposure to the
9 New York Stock Exchange, the NASD or any
10 securities industry arbitration up until
11 that point?
12 A. No.
13 Q. Other than the proceeding we
14 are in today and events that led up to
15 this particular proceeding, have you ever
16 had any exposure to New York State Stock
17 Exchange or NASD arbitration?
18 A. Yes.
19 Q. What was your exposure?
20 A. Well, number one, there was a
21 mediation hearing about my particular case
22 within the rest of the people who had come
23 forward from Prudential. And then after
24 that there was a -- I had to testify
25 against Tony Carranate who came in and

[Page 48]

1 J. Vaughn
2 wanted to or I guess he was going after
3 Prudential for whatever reasons and I had
4 to testify against him.
5 Q. In arbitration? He was part of
6 the management?
7 A. He was part of the management.
8 Yes.
9 Q. He was suing Prudential?
10 A. Yes.
11 Q. And you were brought in as a
12 witness for Prudential?
13 A. Yes.
14 Q. Have you ever had any other
15 exposure to the arbitration process?
16 A. No.
17 Q. Now, did there come a time
18 when your case settled?
19 A. Yes.
20 Q. And is Exhibit 3 your
21 settlement agreement?
22 A. Yes, it is.
23 Q. Do you recall when you saw
24 your settlement agreement for the first
25 time?

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[13] (Pages 46 to 49)

1 J. Vaughn
 2 A. Yes, I do.
 3 Q. When was that?
 4 A. It was at a fundraiser for
 5 Carl McCall at Tavern on the Green
 6 probably in November of '98.
 7 Q. Was it the day you signed your
 8 agreement?
 9 A. Yes, it was.
 10 Q. So I just want to be clear,
 11 you saw it for the first time that was the
 12 day you signed it?
 13 A. The first time I saw my
 14 agreement was in the bathroom of Tavern on
 15 the Green that's where I signed it.
 16 Q. You saw it for the first time
 17 and signed it in the bathroom at Tavern on
 18 the Green?
 19 A. Yes.
 20 Q. Who showed it to you?
 21 A. Jeffrey Brown.
 22 Q. He was one of the partners of
 23 Leeds Morelli & Brown?
 24 A. Yes.
 25 Q. What were the circumstances of

[Page 50]

1 J. Vaughn
 2 it to some point and just made it clear to
 3 me that this is somewhat of a gag order
 4 for the most part. Just, you can't say
 5 anything, and you can't come back to
 6 Prudential and go public which I guess at
 7 the time we were trying, we wanted to make
 8 this public. And they said that if you
 9 sign this you can't go public. That was
 10 the gist of the conversation.
 11 Q. Any other or anything else
 12 that you discussed?
 13 A. No..
 14 Q. Just that point?
 15 A. Yes.
 16 Q. If you would take a look at
 17 paragraph 14 of your of Exhibit 3 the
 18 settlement agreement --
 19 A. Yes.
 20 Q. -- where it where it says
 21 arbitration.
 22 A. Yes.
 23 Q. Did you discuss that clause at
 24 all with Mr. Brown?
 25 A. No.

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1 J. Vaughn
 2 your seeing it in the bathroom?
 3 A. We were invited there by Leeds
 4 Morelli & Brown to it was a fundraiser for
 5 Carl McCall he was running for New York
 6 State Comptroller, and we were invited and
 7 not only myself but a few other people
 8 were introduced to their settlement
 9 agreements there for the first time. So I
 10 just --
 11 Q. Mr. Vaughn, were you sitting
 12 at table and he said here is your
 13 agreement? What were the circumstances.
 14 A. No, again, like I said I saw
 15 it for the first time in the men's room.
 16 Q. Where did you sign it?
 17 A. In the men's room.
 18 Q. How long did you review it in
 19 the men's room?
 20 A. Briefly, maybe about three or
 21 four minutes or five minutes tops.
 22 Q. Was Mr. Brown there with you?
 23 A. Yes.
 24 Q. Did he say anything to you?
 25 A. Pretty much, he just went over

[Page 51]

1 J. Vaughn
 2 Q. Did you have any understanding
 3 of what the arbitration procedures were
 4 under the prevailing constitution of rules
 5 of the New York State Stock Exchange Inc.
 6 or the National Association of Securities
 7 Dealers Inc.?
 8 A. No, not in totality.
 9 Q. Did you know whether they had
 10 any rules concerning class actions?
 11 A. No, I didn't.
 12 Q. Did you have the intent to
 13 waive a class action when you read it?
 14 A. No.
 15 Q. Did you discuss that clause
 16 with Mr. Brown?
 17 A. No, not at all.
 18 Q. At the time you signed this
 19 agreement, did you believe that you were
 20 waiving your rights to bring a class
 21 action based upon this agreement?
 22 A. No, and I didn't give it any
 23 thought either.
 24 MR. BORTNICK: I have nothing
 25 further.

[Page 53]

[14] (Pages 50 to 53)

1 J. Vaughn
 2 THE CHAIRMAN: Thank you,
 3 you may proceed.
 4 MR. BORTNICK: Thank you, Mr.
 5 Chairman.
 6 EXAMINATION BY
 7 MR. HARPER:
 8 Q. Good morning, Mr. Vaughn.
 9 A. Good morning.
 10 Q. My name is Gerard Harper, I
 11 represent Prudential.
 12 A. Yes.
 13 Q. I take it you have testified
 14 before at least once?
 15 A. Yes.
 16 Q. And that was in the
 17 arbitration against Mr. Carranate?
 18 A. Yes.
 19 Q. And any other time?
 20 A. No, other than the mediation
 21 that we went through with Prudential.
 22 Q. When you say you testified at
 23 a mediation were you sworn in?
 24 A. If I remember correctly, yes.
 25 Q. And who was the mediator?

[Page 54]

1 J. Vaughn
 2 A. I can't tell you that, I don't
 3 remember.
 4 Q. Where was it held?
 5 A. It was held in, I want to
 6 believe it was the NASDAQ building over
 7 here by across the street from I don't
 8 know the exact address but it's across the
 9 street from New York Plaza.
 10 Q. And who was present?
 11 A. I mean who was present, it
 12 would have been Leeds, Morelli myself and
 13 the panel.
 14 Q. Was Mr. Leeds and Mr. Morelli
 15 there?
 16 A. If I remember correctly, yes,
 17 they all were there.
 18 Q. When you say all, you mean
 19 Leeds?
 20 A. Morelli and Brown was there.
 21 Q. And you were there?
 22 A. Yes.
 23 Q. Was your wife there?
 24 A. No, my wife wasn't there.
 25 Q. And the mediator was there?

[Page 55]

1 J. Vaughn
 2 A. Yes.
 3 Q. How many mediators?
 4 A. I don't remember.
 5 Q. You don't remember the names?
 6 A. No.
 7 Q. Let me show you what your
 8 lawyer marked as Panel Exhibit 1 just a
 9 moment ago, and if I could direct your
 10 attention to paragraph 14.
 11 A. Yes.
 12 Q. Panel Exhibit 1 --
 13 THE CHAIRMAN: Isn't that the
 14 amended complaint?
 15 MR. HARPER: Yes.
 16 MR. BORTNICK: It is part of
 17 Arbitrator Exhibit 1, it is not
 18 Panel Exhibit 1.
 19 MR. HARPER: I'm sorry.
 20 Q. Could you turn to paragraph 14
 21 of part of Arbitrator Exhibit 1 --
 22 A. Yes.
 23 Q. -- and read that paragraph 14,
 24 page 4?
 25 A. Yes.

[Page 56]

1 J. Vaughn
 2 Q. Can you read that out loud?
 3 A. "Upon information and belief,
 4 Leeds Morelli & Brown and the lawyer
 5 defendant's without plaintiff's knowledge
 6 agreed to cap various claims under their
 7 agreement with PSI and refused to press
 8 plaintiff's claims until they received
 9 payment from PSI which payments were
 10 concealed from plaintiff and plaintiff's
 11 class."
 12 Q. What is your information and
 13 belief to that?
 14 A. I have no idea.
 15 Q. Now, you left Prudential in
 16 1998?
 17 A. That's correct.
 18 Q. And why don't you take a look
 19 at your settlement agreement which is
 20 Exhibit 3?
 21 A. Yes.
 22 Q. And that is your signature on
 23 page 4?
 24 A. Yes.
 25 Q. Who wrote the date in there,

[Page 57]

[15] (Pages 54 to 57)

1 J. Vaughn
 2 is that your handwriting?
 3 A. I don't know.
 4 Q. Do you recognize that?
 5 A. No.
 6 Q. Do you remember whether that
 7 was the date of the McCall fundraiser?
 8 A. Possibly because I believe I
 9 left in the early part of November, so
 10 that it could possibly be the date.
 11 Q. Well, let's turn to page 1 of
 12 Exhibit 3.
 13 A. Yes.
 14 Q. Could you read paragraph 1,
 15 the first page?
 16 A. Yes. "Separation from
 17 employment, Vaughn's last date of
 18 employment at PSI shall be October 23,
 19 1998."
 20 Q. Does that refresh your
 21 recollection that you signed this
 22 agreement after your last day of
 23 employment at PSI?
 24 A. No.
 25 Q. Is that statement false?

[Page 58]

1 J. Vaughn
 2 A. I don't recall. I don't
 3 recall.
 4 Q. But you have no reason to
 5 doubt, as you sit here today, that you
 6 executed the document on or about October
 7 27, 1998 and that your last date of
 8 employment was four days before?
 9 A. No, I don't necessarily agree
 10 with that.
 11 Q. If you don't agree with that,
 12 then tell me what is in your mind that
 13 makes you doubt the authenticity and
 14 accuracy of the document?
 15 A. Because when I left Prudential
 16 before I had anything in writing stating
 17 what my last day was, I got a call from
 18 Leeds Morelli & Brown at the job 4 o'clock
 19 in the afternoon -- and I remember this
 20 clearly -- they said if you choose to, you
 21 do not have to go back to Prudential
 22 anymore we have X, Y and Z for you, that's
 23 it. You let us know what you want to do.
 24 And that's what I remember.
 25 It could have been that day, but clearly I

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1 J. Vaughn
 2 was still an employee of Prudential as far
 3 as I remember as of October 23.
 4 Q. So you could have been orally
 5 notified that your claim had been resolved
 6 and understood that your last day was to
 7 be October 23, 1998 and then signed the
 8 paperwork four days later?
 9 A. I can't say, I don't remember.
 10 Q. You have no reason to doubt as
 11 you sit here today that the statements in
 12 the document itself are accurate?
 13 A. No, I don't have a reason to
 14 doubt it.
 15 Q. Thank you.
 16 Now, you mentioned that you
 17 retained Leeds & Morelli and your best
 18 estimate was January of 1998; do you
 19 recall that?
 20 A. Yes.
 21 Q. Did you sign an agreement with
 22 Leeds & Morelli?
 23 A. Leeds & Morelli and myself we
 24 talked in the latter part of the year
 25 before I signed that retainer. So did I

[Page 60]

1 J. Vaughn
 2 sign a retainer when I first was
 3 introduced to them, no, this took about a
 4 month or so before I did.
 5 MR. BORTNICK: Would you
 6 read back the question, please.
 7 (A portion of the record was
 8 read.)
 9 Q. Yes?
 10 A. Yes.
 11 Q. Let me show you a document
 12 that will be marked as whatever you want
 13 to mark it as?
 14 MR. BORTNICK: Respondents'
 15 Exhibit 1.
 16 MR. HARPER: That's fine.
 17 (Respondents' Exhibit 1,
 18 agreement marked for identification,
 19 as of this date.)
 20 Q. You weren't fired by
 21 Prudential, correct?
 22 A. No.
 23 Q. I'm incorrect?
 24 A. No, I wasn't fired by
 25 Prudential.

[Page 61]

[16] (Pages 58 to 61)

1 J. Vaughn
2 Q. You left voluntarily?
3 A. Yes.
4 Q. And now, when you initially
5 retained Leeds Morelli, it was for the
6 purpose of negotiating a settlement with
7 PSI; isn't that right?
8 A. No, that is not right.
9 Q. When you signed the retainer
10 agreement with Leeds Morelli, you did so
11 to retain them to negotiate settlement
12 with PSI, correct?
13 A. No.
14 Q. Look at the first paragraph of
15 paragraph 1.
16 A. Yes.
17 Q. And let me rephrase the
18 question for you.
19 A. Yes.
20 Q. You say you met with Leeds
21 Morelli sometime in November --
22 A. Yes.
23 Q. -- of what I guess was '97.
24 A. Yes.
25 Q. Did you call them or did they

[Page 62]

1 J. Vaughn
2 call you?
3 A. I didn't call them. I was
4 referred to them by another colleague who
5 had already retained them.
6 Q. Who?
7 A. Connie Hernandez.
8 Q. And what did Ms. Hernandez say
9 to you and what did you say to her?
10 A. Connie expressed to me that
11 she knew I was looking for a lawyer as
12 well because of the issues that were going
13 on at Prudential, and I wanted to do
14 something about it.
15 So Connie told me she already
16 had a lawyer that she had signed a
17 retainer for, she said they were good and
18 that maybe it would be better that I join
19 them rather than have an individual,
20 another lawyer, and not have the esteem it
21 would be if you had more than one person
22 being retained by a particular firm.
23 Q. And that happened in around
24 November of?
25 A. November, December of '97.

[Page 63]

1 J. Vaughn
2 Q. And then you subsequently
3 executed a retainer agreement with Leeds
4 Morelli, correct?
5 A. That's correct.
6 Q. And in that retainer agreement
7 the first thing that Leeds Morelli
8 promised to do was to negotiate a
9 settlement with PSI on your behalf,
10 correct?
11 A. I don't know that.
12 Q. Read paragraph 1 of the
13 retainer agreement.
14 A. "The retainer will only
15 include the contacting of employee to seek
16 a negotiated settlement."
17 Q. Stop for a minute. Is there
18 any word in that sentence you don't
19 understand?
20 A. No.
21 Q. And so the retainer agreement
22 in the first instance was only to contact
23 PSI to seek a negotiated settlement,
24 correct?
25 A. According to the retainer,

[Page 64]

1 J. Vaughn
2 yes.
3 Q. And then if you would read the
4 second sentence, please.
5 A. "If legal action is required
6 then the parties will discuss a different
7 financial situation."
8 Q. So the first task that you
9 gave Leeds Morelli was to go seek a
10 settlement of your claims?
11 A. In correct.
12 Q. Well --
13 A. Whatever this says here is one
14 thing, I'm telling you that is incorrect.
15 Q. So this contract means nothing
16 too?
17 A. I didn't say it doesn't mean
18 anything. You are asking me, and I'm
19 being totally honest with you, no, that is
20 not the case.
21 Q. You didn't understand it when
22 you read it?
23 A. You got to -- okay.
24 Q. Did you understand?
25 A. Yes, I understood.

[Page 65]

[17] (Pages 62 to 65)

1 J. Vaughn
 2 Q. Did you read it?
 3 A. Yes.
 4 Q. Did you read it in the men's
 5 room or somewhere else?
 6 A. I don't remember where I read
 7 it.
 8 Q. Did you read it in their
 9 office?
 10 A. I don't remember.
 11 Q. Have you ever been to their
 12 office?
 13 A. Yes.
 14 Q. How many times?
 15 A. I don't recall.
 16 Q. And you read this before you
 17 signed it?
 18 A. Yes.
 19 Q. And you understood it?
 20 A. I understood the agreement
 21 that I had with Leeds & Morelli, again.
 22 Q. Now, let's go back to
 23 paragraph 6 --
 24 A. Yes.
 25 Q. -- read that out loud.

[Page 66]

1 J. Vaughn
 2 sentence.
 3 A. "All parties have read this,
 4 understood each and every term herein, and
 5 the signature below constitutes an
 6 acknowledgement of such an understanding."
 7 Q. Now do you understand all the
 8 words there?
 9 A. Clearly.
 10 Q. Was that true when you signed
 11 it, when you promised and acknowledged
 12 that all, that you read it understood it;
 13 was it true at the time?
 14 A. No.
 15 Q. It was false?
 16 A. Yes.
 17 Q. So you lied when you signed
 18 your name to this contract?
 19 A. I didn't lie no more than the
 20 person who signed above my name.
 21 Q. Was paragraph 7 true or false
 22 when you signed it?
 23 A. I believe I just answered that
 24 question.
 25 Q. Tell it to me again.

[Page 68]

1 J. Vaughn
 2 A. "There are no other agreements
 3 between the parties other than those
 4 contained here in this agreement
 5 represents the entire understanding of the
 6 parties."
 7 Q. Is there any word or phrase in
 8 that sentence or paragraph that you do not
 9 understand?
 10 A. I understand it clearly.
 11 Q. You understand it clearly?
 12 A. Yes.
 13 Q. So whatever agreement you had
 14 with Leeds & Morelli as of January 5, 1998
 15 was in these two pages, right?
 16 A. According to this, yes.
 17 Q. According to this?
 18 A. Yes.
 19 Q. And so there was no other
 20 contract between you?
 21 A. Again, do you want to talk
 22 about what is on paper or do you want to
 23 talk about what we agreed upon?
 24 Q. You see I can only talk about
 25 what is on paper. Let's read the next

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1 J. Vaughn
 2 A. No. When you asked him to
 3 repeat the question, could you repeat the
 4 answer --
 5 THE CHAIRMAN: Mr. Vaughn,
 6 answer the question, please.
 7 A. The answer is yes again.
 8 Q. It is false?
 9 A. Yes.
 10 Q. And number 6 is false too?
 11 A. That is correct.
 12 Q. And number 1 is false too?
 13 A. That's correct.
 14 Q. Is there anything in
 15 Respondents' Exhibit 1 that is true?
 16 A. Yes, I retained them.
 17 Q. That's it?
 18 A. That's it.
 19 Q. And you read an understood the
 20 agreement, but it was a false agreement
 21 you knew it to be false at the time you
 22 signed it?
 23 A. Again, I understood the
 24 agreement. I understood what's in the
 25 agreement. Again, Leeds & Morelli as well

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[18] (Pages 66 to 69)